

HOUSE BILL 3763

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 66, Chapter 25, relative to requirements for records of release pertaining to certain liens attached to real property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 25, is amended by adding the following language as a new, appropriately designated part:

§ 66-25-301. Notwithstanding the provisions of any law to the contrary, a recorded mortgage on a dwelling of two (2) units or less occupied by the owner as the owner's principal residence or on farmland may be discharged by an attorney licensed to practice law in this state if, after receipt of full payment of the mortgage, the mortgagee or the mortgagee's successor, transferee, or assignee fails to satisfy the record by filing a formal deed of release, in accordance with § 66-25-101(a), within thirty (30) days following such receipt of payment. The attorney shall execute and record an affidavit with the register of the county wherein the debt secured by the mortgage is lawfully registered affirming that:

(1) The affiant is an attorney in good standing who is licensed to practice in Tennessee;

(2) The affidavit is made at the request of the mortgagor or the mortgagor's executor, administrator, successor, assignee, or transferee or the transferee's mortgagee;

(3) The mortgagee or the mortgagee's successor, transferee, or assignee has provided a payoff statement with respect to the loan secured by the mortgage;

(4) The mortgagee or the mortgagee's successor, transferee, or assignee has received full payment of the mortgage in accordance with the payoff statement, as proven by bank check, certified check or attorney client funds account check negotiated by the mortgagee or as proven by other reasonable evidence of receipt of full payment by the mortgagee;

(5) Thirty (30) or more days have elapsed since full payment was received by the mortgagee or the mortgagee's successor, transferee, or assignee;

(6) Fifteen (15) or more additional days have elapsed since the affiant sent advance written notification by certified mail, return receipt requested, to the last known address of the mortgagee or the mortgagee's successor, transferee, or assignee stating that the affiant intends to execute and record an affidavit in accordance with this part and enclosing within such notification a copy of the proposed affidavit;

(7) Neither the mortgagee nor the mortgagee's successor, transferee, or assignee has satisfied the record by filing a formal deed of release, pursuant to § 66-25-101(a); and

(8) Neither the mortgagee nor the mortgagee's successor, transferee, or assignee has disputed payoff of the mortgage, in response to such advance such written notification or otherwise.

§ 66-25-302. The affidavit shall also include the names and addresses of the mortgagor and the mortgagee or the mortgagee's successor, transferee, or assignee; the date of the mortgage; as well as the book and page number or other reference information with respect to the most recent recorded assignment of the mortgage.

§ 66-25-303. The affiant shall attach to the affidavit the following, certifying that each copy is a true copy of the original document:

(1) Front and back photocopies of the bank check, certified check or attorney client funds account check negotiated by the mortgagee or other reasonable evidence of that full payment has been received by the mortgagee; and

(2) A photocopy of the payoff statement.

§ 66-25-304. An affidavit recorded under this part has the same effect as recording a formal deed of release under § 66-25-101(a).

§ 66-25-305. An attorney, who files an affidavit pursuant to this part having knowledge that information contained within or attached to the affidavit is false, is liable to the mortgagee for any actual damages caused by the recording of such affidavit and for reasonable attorney's fees and costs.

§ 66-25-306. As used in this part, "mortgage" means a mortgage or deed of trust as described in and allowed pursuant to § 66-5-103.

SECTION 2. This act shall take effect July 1, 2008, the public welfare requiring it.